IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7365 OF 2005

Jitendra Ashok Dolas & another Applicants

versus

State of Maharashtra Respondents

S.V.Marwadi for applicants.

Mrs.S.D.Shinde, APP for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 28th November 2005

PC :

1. Heard Shri Marwadi in support of this application and Ms.Shinde for the prosecution.

2. The contention of Shri Marwadi is that the first applicant as well as second applicant are arrayed as accused in CR No.3/2005 under sections 302, 307, 384, 323 R/W 34 of IPC.. It is contended by him that as far as incident at Igatpuri Railway Station is concerned, the applicants had prevented the deceased as well as his associates from cooking food in the Cabin, which was temporarily constructed for storing of

materials required for the project work which was awarded to M/s.Larsen & Toubro Ltd.. He invites my attention to a cross complaint which was lodged by the first applicant against one Prem Kumar who is also one of the persons who have given a statement to the Police insofar as the subject crime is concerned.

3. Shri Marwadi’s case is that as far as second applicant is concerned, the dying declaration as well as other statements recorded, do not pin point him as a person who has taken part in either pouring the kerosene after allegedly locking up persons in the cabin or setting the deceased on fire by lighting the match stick. He states that in the Sessions Court it was pointed out that there is no identification parade and in these circumstances the Criminal Application Nos.445/2005 and 446/2005 could not have been rejected.

4. Ms.Shinde, on the other hand, states that the identification parade was done as early as on 6th April 2005 and she relies upon the said report. Shri Marwadi invites my attention to two communications at the instance of Investigating Authority, which seek details of the labourers

from the construction company in whose favour the work order was issued.

5. In my view, the Sessions Court has relied upon the statements and recorded a finding that the names of the applicants are disclosed. The Sessions Judge in para no.5 has proceeded on the basis that no identification is arranged but witnesses had an occasion to see the assailants on the spot and they have given the description. It is on this basis that the applications of both the applicants have been rejected.

6. In my view, the fact that the identification parade was held and that all witnesses allegedly point to both the applicants as the persons who have poured kerosene and lighted the match stick, is something which was not before the learned Sessions Judge. In the interest of justice, therefore, it would be appropriate if the learned Sessions Judge is directed to hear the applications of both the applicants for bail being Criminal Application Nos.445/2005 and 446/2005, afresh and after giving an opportunity to the applicants as well as prosecution, to place all relevant materials.

7. Needless to state that both the Criminal Application Nos.445/2005 and 446/2005 are restored to the file of learned Sessions Court and these applications shall be disposed of uninfluenced by the earlier order as well as observations in this order.

(S.C.DHARMADHIKARI, J.)